

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

Vol. 19

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 85-24)

Recordation of Trade Name: "THE UNION FORK AND HOE COMPANY"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Recordation.

SUMMARY: On November 15, 1984, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "THE UNION FORK AND HOE COMPANY," was published in the Federal Register (49 FR 45288-45289). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in opposition to the recordation and received not later than January 14, 1985. No responses were received in opposition to the notice. Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "THE UNION FORK AND HOE COMPANY" is recorded as the trade name used by the Union Fork and Hoe Company, a corporation organized under the laws of the State of Ohio, located at 500 Dublin Avenue, Columbus, Ohio 43216. The trade name is used in connection with hand-operated farm, garden and lawn tools manufactured in the United States.

DATE: February 19, 1985.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: February 13, 1985.

DONALD W. LEWIS,

Director,

Entry Procedures and Penalties Division.

[Published in the Federal Register, February 19, 1985 (50 FR) 7026]

19 CFR Parts 171 and 172

(T.D. 85-25)

Customs Regulations Amendments Relating To District Directors Authority Over Fines, Penalties, and Liquidated Damages Cases**AGENCY:** U.S. Customs Service, Department of the Treasury.**ACTION:** Final rule.

SUMMARY: This document amends the Customs Regulations by increasing the authority of district directors of Customs to act on petitions for relief in administrative cases involving penalties, forfeitures, or claims for liquidated damages, incurred for violations of the customs or navigation laws or regulations. The Customs Regulations are also amended to provide that the authority to act on certain supplemental petitions is retained by the Commissioner of Customs. The further delegation of authority will result in more expeditious processing of less complex cases, thereby benefiting the importing and traveling public.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Miscellaneous Penalties Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5746).

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Pursuant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), the Secretary of the Treasury is empowered to mitigate or remit fines, penalties, or forfeitures that are incurred under the customs or navigation laws. Section 623(c), Tariff Act of 1930 (19 U.S.C. 1623(c)) empowers the Secretary to cancel any charge made against a bond for breach of any condition of the bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as the Secretary may deem sufficient. With certain stated exceptions, by paragraph 1(h) of Treasury Department Order No. 165, Revised (T.D. 53654), the Secretary delegated authority to the Commissioner of Customs to act on all cases where the claim for liquidated damages, fine or penalty (including the forfeiture) is not in excess of \$100,000. This Order granted full mitigation authority to the Commissioner for specifically listed violations, including all liquidated damages claims.

The Commissioner, by regulation, has delegated some of his mitigation authority to district directors of Customs. Pursuant to § 171.21, Customs Regulations (19 CFR 171.21), district directors are empowered to mitigate or remit fines, penalties, or forfeitures incurred under any law administered by Customs when the total amount of fines or penalties incurred with respect to any one offense, together with the value of any merchandise subject to forfeiture, does not exceed \$25,000. Under § 172.21, Customs Regulations (19 CFR 172.21), district directors may cancel claims for liquidated damages arising from breaches of the terms or conditions of any bond when the claim is \$50,000 or less. For certain liquidated damages claims the district director is given full authority to act upon the claim, without regard to the amount of the claim. These claims, which include most notably the failure to file timely entry summaries, are outlined in § 172.22, Customs Regulations (19 CFR 172.22).

Pursuant to §§ 171.33 and 172.33, Customs Regulations (19 CFR 171.33, 172.33), regional commissioners of Customs are empowered to consider supplemental petitions for relief in all cases acted upon by the district directors. Such review is mandated if there has been a specific request on the part of the petitioner for reconsideration by the regional commissioner, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director.

Over the years it became clear that district directors were able to handle many of the less complex cases competently and more expeditiously than Customs Headquarters. Therefore, by notice published in the Federal Register on July 17, 1984 (49 FR 28883), it was proposed to amend Parts 171 and 172, Customs Regulations, to increase the district directors' authority. It was proposed that district directors be allowed to decide cases in which the liability was \$100,000 or less, except with respect to violations of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), in which the jurisdictional amount was to remain at \$25,000 or less. It was also proposed that supplemental petition review authority be retained by the Commissioner if the amount of the liability was between \$25,000 and \$100,000 (inclusive) with respect to penalty and forfeiture cases, and between \$50,000 and \$100,000 (inclusive) with respect to liquidated damages cases. Regional commissioners were to have this review authority if the liability was either \$25,000 or less in penalty and forfeiture cases, or \$50,000 or less in liquidated damages cases.

Four comments were received in response to the notice. Three supported the granting of further mitigation authority and two also supported the retention of existing supplemental petition review authority by Customs Headquarters. A discussion of the specific comments and our response follow.

DISCUSSION OF COMMENTS

Comment: The proposed delegation of further mitigation authority to district directors should not except cases arising under 19 U.S.C. 1592.

Response: We disagree. Because of the inherently complex nature of these cases, the frequent representation of alleged violators by experienced Customs counsel, and the availability of expertise at the Customs Headquarters level, it has been determined that the existing delegations of authority in these cases should be retained.

Comment: Since district directors are to be given mitigation authority in cases in which the liability is under \$100,000, regional commissioners should be given the same authority for supplemental petition review.

Response: We disagree. Retention of supplemental petition review authority by Headquarters in fines, penalty, or forfeiture cases in which the liability is between \$25,000 and \$100,000 is essential to our functional responsibility for the fines, penalties and forfeitures program. Monitoring and oversight of Customs field operations are the central points of this functional responsibility. We have found that retaining review of such cases in the \$25,000-\$100,000 range is an effective method of implementing this monitoring and oversight responsibility. Also, retention of current supplemental petition review authority ensures Headquarters review of cases in which unique or precedential issues might arise.

Comment: One commenter is concerned that the proposed delegation of further authority to district directors would result in a greater lack of consistency in decisions made by field officers. That commenter supports the increase in authority only if it is accompanied by an increase in training and monitoring of field personnel by Headquarters.

Response: As stated in the notice proposing the delegation of further mitigation authority, this delegation will be accompanied by a program for increased monitoring of the disposition of cases within field offices, as well as an expanded training program for fines and penalties personnel in the field offices. Also, it should be noted that a new Fines, Penalties and Forfeitures Handbook, which will provide comprehensive mitigation guidelines for all violations, will be published as a guide for field personnel.

Upon consideration of all comments received, and further review of the matter, it has been determined advisable to adopt the amendments as proposed.

EXECUTIVE ORDER 12291

These amendments do not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

REGULATORY FLEXIBILITY ANALYSIS

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), it is hereby certified that the amendments set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PARTS 171 AND 172

PART 171

Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

PART 172

Administrative practice and procedure, Penalties.

AMENDMENTS TO THE REGULATIONS

Parts 171 and 172, Customs Regulations (19 CFR Parts 171, 172), are amended as set forth below.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: February 4, 1985.

JOHN M. WALKER, Jr.,

Assistant Secretary of the Treasury.

[Published in the Federal Register, February 22, 1985 (50 FR 7335)]

PART 171—FINES, PENALTIES, AND FORFEITURES

1. Section 171.21 is revised to read as follows:

§ 171.21 Petitions acted on by district director.

The district director may mitigate or remit fines, penalties, and forfeitures incurred under any law administered by Customs, with the exception of penalties or forfeitures incurred under the provisions of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate, when the total amount of the fines and penalties incurred with respect to any one offense, together with the total value of any merchandise or other article subject to forfeiture or to a claim for forfeiture value, does not exceed \$100,000. The district director may mitigate or remit fines,

penalties, or forfeitures incurred under 19 U.S.C. 1592 when the total amount of those fines, penalties or forfeitures does not exceed \$25,000.

2. Section 171.33(b)(1) is revised to read as follows:

§ 171.33 Supplemental petitions for relief.

(b) Consideration—(1) Decisions of the district director. Where the district director has the authority to grant relief in accordance with the provisions of § 171.21 and 171.22, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner or Commissioner of Customs, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if the amount of the liability is \$25,000 or less, or to the Commissioner of Customs if the amount of the liability is more than \$25,000 but does not exceed \$100,000, for reconsideration and disposition of the case, except as provided in § 171.22(c).

(R.S. 251, as amended, R.S. 5294, as amended, sec. 9, 24 Stat. 81, as amended, secs. 618, 623, 624, 641, 46 Stat. 757, as amended, 759, as amended (19 U.S.C. 66, 1618, 1623, 1624, 1641, 46 U.S.C. 7, 320))

PART 172—LIQUIDATED DAMAGES

1. Section 172.21 is revised to read as follows:

§ 172.21 Petitions acted on by district director of Customs.

The district director may cancel any claim for liquidated damages incurred on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate when the claim is \$100,000 or less.

2. Section 172.33(b)(1) is revised to read as follows:

§ 172.33 Supplemental petitions for relief.

(b) Consideration—(1) Decisions of the district director. Where the district director has authority to grant relief in accordance with the provisions of § 172.21 and 172.22, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner or Commissioner of Customs, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if the amount of the liability is \$50,000 or less, or to the Commissioner of Customs if the amount of the liability is more

than \$50,000 but does not exceed \$100,000, for reconsideration and disposition of the case, except as provided in § 172.22(d)(3).

(R.S. 251, as amended, R.S. 5294, as amended, sec. 9, 24 Stat. 81, as amended, secs. 618, 623, 624, 641, 46 Stat. 757, as amended, 759, as amended (19 U.S.C. 66, 1618, 1623, 1624, 1641, 46 U.S.C. 7, 320))

(T.D. 85-26)

Reimbursable Services—Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to Section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning February 17, 1985.

Installation	Biweekly excess cost
Montreal, Canada	\$22,435
Toronto, Canada	32,502
Kindley Field, Bermuda	10,900
Nassau, Bahama Islands	19,399
Vancouver, Canada	16,353
Winnipeg, Canada	3,373
Freeport, Bahama Islands	13,049
Calgary, Canada	9,475
Edmonton, Canada	6,040

D. LYNN GORDON,
Acting Comptroller.

[Published in the Federal Register, February 20, 1985 (50 FR 7157)]

(T.D. 85-27)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

January 1, 1985, holiday use rates for December 31, 1984.

Greece drachma:	
January 2, 1985	\$0.007728
January 3, 1985 .....	.007737
January 4, 1985 .....	.007746
Israel shekel:	
January 2-4, 1985	N/A
South Korea won:	
January 2-3, 1985 .....	.001206
January 4, 1985 .....	.001204
Taiwan dollar:	
January 2-3, 1985	N/A
January 4, 1985 .....	.025316

(LIQ-03-01 S:COM CIE)

Dated: January 4, 1985.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-28)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
January 7, 1985	\$0.007731
January 8, 1985 .....	.007764
January 9, 1985 .....	.007758
January 10-11, 1985 .....	.007770
Israel shekel:	
January 7-11, 1985	N/A
South Korea won:	
January 7, 1985 .....	.001203
January 8, 1985 .....	.001201
January 9, 1985 .....	.001203
January 10, 1985 .....	.001201
January 11, 1985 .....	.001203

Taiwan dollar:

January 7, 1985.....	.025329
January 8, 1985.....	.025336
January 9, 1985.....	.025349
January 10, 1985.....	.025361
January 11, 1985.....	.025374

(LIQ-03-01 S.COM CIE)

Dated: January 11, 1985.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-29)

Foreign Currencies—Daily Rates for Countries Not on Quarterly
 List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:

January 14, 1985.....	\$0.007749
January 15, 1985.....	.007680
January 16, 1985.....	.007698
January 17, 1985.....	.007692
January 18, 1985.....	.007716

Israel shekel:

January 14-18, 1985.....	N/A
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South Korea won:

January 14, 1985.....	.001201
January 15, 1985.....	.001200
January 16-17, 1985.....	.001199
January 18, 1985.....	.001200

Taiwan dollar:

January 14, 1985.....	.025394
January 15, 1985.....	.025400
January 16, 1985.....	.025407
January 17, 1985.....	.025419

January 18, 1985025432

(LIQ-03-01 S:COM CIE)

Dated: January 18, 1985.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-30)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

January 21, 1985 holiday, use rates for January 18, 1985.

Greece drachma:

January 22, 1985	\$0.007722
January 23, 1985 .....	.007710
January 24, 1985007722
January 25, 1985007725

Israel shekel:

January 22-25, 1985	N/A
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South Korea won:

January 22-23, 1985001202
January 24-25, 1985001201

Taiwan dollar:

January 22, 1985 .....	.025471
January 23, 1985 .....	.025484
January 24, 1985 .....	.025497
January 25, 1985 .....	.025510

(LIQ-03-01 S:COM CIE)

Dated: January 25, 1985.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-31)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C)

Greece drachma:	
January 28, 1985	\$0.007722
January 29, 1985 .....	.007719
January 30, 1985 .....	.007713
January 31, 1985 .....	.007728
Israel shekel:	
January 28-31, 1985	N/A
South Korea won:	
January 28-31, 1985 .....	.001201
Taiwan dollar:	
January 28, 1985 .....	.025530
January 29, 1985 .....	.025543
January 30, 1985 .....	.025556
January 31, 1985 .....	.025556

(LIQ-03-01 S.COM CIE)

Dated: January 31, 1985

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-32)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-9 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Republic of South Africa rand:
January 11, 1985 \$0.46000

(LIQ-03-01 S:COM CIE)

Dated: January 11, 1985.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-33)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-9 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Republic of South Africa rand:
January 14, 1985 \$0.44350
January 15, 198543500
January 16, 198543750
January 17, 198542900
January 18, 198543000
Sri Lanka rupee:
January 14, 1985 N/A

(LIQ-03-01 S:COM CIE)

Dated: January 18, 1985.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-34)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New

York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-9 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

January 21, 1985 holiday, use rates for January 18, 1985.

Brazil cruzeiro:

January 22-25, 1985 \$0.000290

Republic of South Africa rand:

January 22, 198543850

January 23, 198543100

January 24, 198543500

January 25, 198544650

(LIQ-03-01 S:COM CIE)

Dated: January 25, 1985.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-35)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-9 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:

January 28-30, 1985 \$0.000285

January 31, 1985000279

Republic of South Africa rand:

January 28, 198546850

(LIQ-03-01 S:COM CIE)

Dated: January 31, 1985.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

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U.S. Court of Appeals for the Federal Circuit

(Appeal No. 84-1208)

**HECTOR RIVERA SIACA, D/B/A GUAYABERAS DON HECTOR,
APPELLANT V. THE UNITED STATES, ET AL., APPELLEES**

(Decided: February 14, 1985)

John M. Garcia, of Hato Rey, Puerto Rico, submitted for appellant.

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney-in-Charge International Trade Field Office and *Michael P. Maxwell*, of New York, New York, submitted for appellee.

Appealed from: U.S. Court of International Trade.

Judge RESTANI.

Before SMITH, *Circuit Judge*, NICHOLS, *Senior Circuit Judge*, and NIES, *Circuit Judge*.

Nichols, *Senior Circuit Judge*.

This case is an appeal stated to be from an opinion of the Court of International Trade (CIT), 7 CIT —, slip op. 84-5 (January 26, 1984) *reh'g denied*, 585 F. Supp. 668 (Ct. Int'l Trade 1984), dismissing the complaint in this action for lack of subject matter jurisdiction. The complaint is on its face a petition for return of illegally seized merchandise. It had previously been filed with the United States District Court for the District of Puerto Rico and was by it transferred to the CIT on the ground that the CIT had exclusive subject matter jurisdiction under 28 U.S.C. § 1581(i)(2). The CIT held that the action, if to contest the assessment of duties, was not backed by a proper protest, and if to recover damages for an illegal search and seizure, is to recover for a tort, and as such is barred by 28 U.S.C. § 1346(b) and § 2680, which, taken together, show a clear stand by Congress not to consent to tort actions seeking damages based on alleged illegal searches or seizures by customs officers. On motion for rehearing, the court added the further reason that even if the goods were seized illegally, the proceeds as realized on auction were devoted to pay lawful duties, and under such circumstances a court of equity should not order their refund to the party owing the duties, which appellant was. We think it possible that in considering this aspect only, the court may have exercised subject matter jurisdiction and the dismissal could be considered to be on

the merits. The court was responding to the argument that it had mistaken the relief sought, which neither sounded in tort nor attacked the assessment of the duties.

We agree with the court below and in general for the reasons given by it. Appellant in his brief now claims only the return of the seized merchandise, or its money proceeds, and presumably therefore has waived the tort damages originally claimed. It is arguable that merely claiming the return of seized merchandise is not a tort claim and we have therefore given independent consideration to that question. It does not, however, change the result, which is that we affirm.

FACTS

This case commenced with a visit by Customs Special Agent Benjamin Garcia Villalobos (Garcia) to appellant herein, Hector Rivera Siaca (Rivera) at the latter's business premises at 353 Andalucia Street, Puerto Nuevo, Puerto Rico, the result of prior information from a confidential source. Rivera had been importing ornamental shirts (guayaberas) from Merida, Yucatan, Mexico. He cooperated, according to Garcia, in furnishing business records, by which it was established that Rivera had made 41 consumption entries under false invoices or other deceptive practices to reduce the duties payable, resulting in a loss of revenue of \$114,274.01. The majority of shirts had been sold, but 237 dozens were found on and seized from the premises on October 5, 1979, having a domestic value of \$79,345. Contrary to appellant's brief, there is nothing in the record to substantiate that any of the seizures were of shirts that had not been fraudulently entered. Only shirts were seized, and Garcia's report reflects that the same pattern of fraud was followed throughout. Seizure of goods legally imported without fraud or falsity would have been highly improper and we cannot accept the allegation that a customs agent did such a thing, included in a brief but not pleaded or otherwise documented.

By paper dated October 3, 1979, Rivera abandoned all claim to the seized merchandise, waived any further proceedings, judicial or administrative, tendered the merchandise as partial payment for his obligations with the Customs Service, and authorized its immediate sale, according to established procedures of the Service.

Rivera pleads that the "searches and seizures" were done without a warrant or probable cause, that the government agent obtained the seized property by improper conduct, lies, coercion, etc., and threatened Rivera with criminal prosecution if he consulted counsel. The first statement of such a claim by Rivera in the record was made on a customs claim form and is dated September 23, 1981, almost two years after the seizure, and after several other things had happened. The truth of the charges has never been tested in court since counsel has been unable to find a tribunal

that will accept jurisdiction. For purposes of the present appeal only, we assume the charges true as pleaded.

The record reflects that the shirts were auctioned on November 15, 1979, and \$29,835 was recovered. This was placed in a suspense account pending action on a petition for remission (pursuant to 19 U.S.C. § 1618) filed by appellant apparently in early 1980.

Some time or times before April 14, 1980, a penalty was assessed against Rivera under 19 U.S.C. § 1592 in the amount of approximately \$996,000. This is the usual action in customs fraud cases. The Supreme Court in *United States v. Eight Thousand Eight Hundred & Fifty Dollars (\$8,850) in United States Currency*, 461 U.S. 555 (1983), describes the procedure in such customs seizure cases as it was and still is. In 90 percent of all seizures the claimant petitions for remission or mitigation under 19 U.S.C. § 1618, the petition being addressed to the Secretary or his delegate, not any court. In 75 percent of petition cases, at least partial relief is granted, which typically settles the dispute with no court action being required. In this case, the petition did not deny the fraud, but was based wholly on petitioner's insolvency. The penalty was remitted by decision in September 1980, to \$40,000 provided petitioner also deposited \$114,274.01 as "withheld duties." In the absence of compliance with the decision, the matter was to be referred to the United States Attorney. He did in fact sue Rivera, but the suit was voluntarily dismissed for reasons not given.

Section 1521 of Title 19 U.S.C. authorizes reliquidation of otherwise final liquidations, in the event of fraud. On April 25, 1980, the involved entries were reliquidated under this authority to assess the duty liability that would have accrued in the absence of fraud. If it is correct that Rivera filed no protest, this reliquidation is now final and binding so far as he is concerned, by 19 U.S.C. § 1514, and therefore establishes that the importations were fraudulent. The surety did in fact protest and on denial of the protest took an appeal to the CIT reported as *American Motorists Insurance Co. v. United States*, slip op. 83-8 (February 1, 1983). The law allows such a protest by a surety. Rivera says he did not join in the protest and so is not bound by the CIT decision. It would seem possible that in the circumstances a surety is protesting on behalf of others having an interest in the entry as well as himself, and all would be bound, but that issue is moot in this case because if Rivera was not a party to the protest he is bound by the reliquidation. If he was a party he is bound by the CIT decision which sustains the reliquidation in all respects.

Rivera filed two suits in the United States District Court in Puerto Rico. One was to enforce his tort claim for wrongful acts by the customs agent in the amount of \$4,000,000. The district judge dismissed this action on the ground of nonwaiver of sovereign immunity, and we do not understand it to be before us. The other is limited to petitioning for return of seized property, or its fruits, the

proceeds realized at auction. That suit was transferred to the CIT, passed upon by the CIT, and is now before us under the present appeal.

DISCUSSION

This is, of course, not the first case in which importers alleged improprieties by customs agents in course of seizing property for false entries under 19 U.S.C. § 1592, and it is probably not going to be the last. Congress has made complete and elaborate provisions to deal with the situation, and we commence by considering what they are and why they did not work as intended in this case.

As the Supreme Court notes in *United States v. \$8,850, supra*, the provisions for administrative relief and judicial review co-exist and work in tandem. The petition to the Secretary under § 1618 can allege nonculpability, or a less serious level of culpability, than the seizing officer proposed. It can allege that the seized merchandise, if any (the procedure applies to money penalties also), was not properly seized. It is in point of fact the usual avenue for importers recovering possession of seized property. It does not appear that in this case the petition relied on any ground except indigency. The record does not include the petition, but the Customs Bureau decision summarizes it as relying on no other ground and appellant nowhere challenges the accuracy of this statement.

If the petition and remission procedure does not settle the case, and the property is valued, as here, over \$10,000, then by 19 U.S.C. § 1610, the United States Attorney must be notified and the seizure placed before the court by a proper proceeding for condemnation. In such a proceeding, of course, misconduct by the seizing officer would be a proper subject for judicial inquiry, especially if, as alleged here, it was of a nature to jeopardize the legality of the seizure itself, as for example, the lack of a proper warrant and of probable cause associated with absence of consent to the search. By § 1608 a claimant to property is permitted to file a claim noting his interest. By § 1604 the duty of the United States Attorney applies to cases, unlike here, when the liability is for a money penalty or forfeiture and a seizure of specific goods is not involved. The warrant procedure is found in § 1595.

These procedures were frustrated here and did not work as Congress intended because of the shift in appellant's position. Since on October 3, 1979, he waived all rights to a further proceeding, judicial and administrative, and tendered the seized property in part payment of his debt, appellees could properly take it that formal report to the United States Attorney, condemnation under § 1610, etc., were superfluous and the appellees were free to dispose of the property without further ado. Appellant has alleged that this October 3 document was itself invalid because tainted by the illegality of the customs agent's doings. It appears, however, that he passed up opportunity after opportunity to advise the Secretary of the

misconduct of his representative, including the § 1618 petition and the suit by the United States Attorney to recover the penalty. So far as the record shows, the first that was heard of these matters was the tort claim of September 23, 1981, and appellant did not in his suit on that claim advise that he had made his wrongs known at any earlier date.

Appellant also does not show that he does not owe appellees a much larger sum in duties and penalties than the fruits of the seized merchandise as realized in the auction sale.

Appellant's scholarly brief relies on what he calls an "anomalous" jurisdiction in United States District Courts to order return of illegally or unconstitutionally seized property, invoking "general equitable principles." Some of the cases are discussed in Judge Restani's opinion on rehearing to which reference is made, and support that such jurisdiction has been exercised, but none are customs cases. Appellant invokes the general notion of *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), but as we understand his position, he denies that he is suing in tort or expects to be compensated out of the Federal Treasury. Rather, he is invoking the help of equity to trace and recover a specific fund of money which may never have been merged into the General Fund of the Treasury.

There exists a general consent to suits founded on equity and which do not call on the Treasury to assuage the plaintiff with money. 5 U.S.C. § 702. Its effect is to eliminate sovereign immunity as a defense, but, of course, the claim must be otherwise supportable. Whether a claim, so understood, is within the subject matter jurisdiction of the district court is a matter we deem unnecessary to pass on here and believe should be decided in the first instance by the courts involved. We do not read Judge Restani as specifically deciding the point and its resolution can wait. She holds rather that appellant's claim is fatally defective even by his own theory, because it is wanting in equity.

Bush v. Lucas, 462 U.S. 367 (1983), teaches a technique for determining when causes of action to enforce constitutional rights may be taken in the federal courts under "anomalous" jurisdiction even though the consent of Congress is not expressly spelled out. By this opinion, as we read it, the more Congress has dealt in detail and over years with a class of cases, the less free are the courts to imply such causes of action without direct statutory support. In *Bush v. Lucas* the issue was a suit by a federal employee against a supervisor in the Civil Service. Congress has dealt elaborately and in detail with the rights of civil servants since 1883 and if any specific kind of relief is not granted, the inference is it has decided against it.

The same reasoning applies here. Congress has dealt even longer with Customs since the first thing Congress did when it convened in 1789 was to pass a Tariff Act. Existing law contains elaborate

and carefully articulated provisions dealing with the rights of persons whose property has been seized, possibly illegally. It cannot be said that these provisions were inadequate for the plaintiff's case. Assuming as we must and do, for purposes of our decision, that he was intimidated or bamboozled by the customs agent, the law would have been adequate and he could have had an administrative or judicial review or both of the seizure proceedings if he had not slept upon his rights long after he should have seen the light. He could have timely repudiated his October 3, 1979, waiver and thereby forced the government to institute forfeiture proceedings in court. *United States v. \$8,850, supra*. Under these circumstances, we cannot say that a gap exists in the law which the courts are needed to fill.

As an equity plaintiff, appellant also suffers, as appellees argue, because he does not come into court with clean hands. He has acquiesced in and not protested a determination under 19 U.S.C. § 1521 that he participated in a fraud, accepting arguendo his own assertion that he was not a party to the surety's CIT appeal.

Appellant's arguments that he does not owe the penalty assessed as well as the reliquidated duties are quite unpersuasive. The CIT was properly satisfied that the proceeds realized by auction of the seized property have been applied towards payment owed appellee by appellant.

CONCLUSION

In view of the foregoing, the decision of the CIT appealed from is affirmed.

AFFIRMED

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao

Morgan Ford

James L. Watson

Gregory W. Carman

Jane A. Restani

Dominick L. DiCarlo

Senior Judges

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decision of the United States Court of International Trade

(Slip Op. 85-17)

A. GIURLANI & BROS., INC., PLAINTIFF *v.* THE UNITED STATES,
DEFENDANT

Court No. 83-8-01171

Before DiCARLO, *Judge*.

MEMORANDUM OPINION AND ORDER

Letter requesting reliquidation under Section 520(c)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1520(c)(1) (1982), met the statutory requirements for a protest under Section 514, 19 U.S.C. § 1514, and the Court has jurisdiction to consider its denial by Customs.

The purpose and effect of the liquid in which the olives were imported and whether the olives were edible at the time of importation are genuine issues of material fact precluding granting summary judgment against the defendant.

[Motions for summary judgment denied.]

(Decided: February 12, 1985)

Bellsey & Baker (Steven W. Baker) for plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, (*Judith M. Barzilay*) for defendant.

DiCARLO, *Judge*: Spanish olives entered by the plaintiff were liquidated on September 3, 1982, and classified as "olives, otherwise prepared or preserved" under item 148.5600, Tariff Schedules of the United States Annotated (TSUSA) (1982).

On November 16, 1982, plaintiff's customs broker sent a letter to the United States Customs Service (Customs) at Terminal Island, California, which read in part:

We respectfully request that the above-mentioned entry be liquidated with a duty refund under the provision of *Section 520(c)(1)* [emphasis added] of the Tariff Act of 1930, as amended, due to the following reasons:

- ☐ Clerical error
- ☒ Incorrect classification and/or duty rate
- ☐ Error in value computation

Reasons:

Olives in brine, under 148.5600/5¢	\$58,259.65
Should be under 148.4440/20¢/gal. ¹	40,884.00

Refund due	17,375.65
Copy of duty ruling by San Francisco Customs attached.	
Duty Paid	\$58,832.36
Should be	41,457.21

Refund due	17,375.65
------------------	-----------

¹ Item 148.44 covers "Olives, fresh, or prepared or preserved: In brine, whether or not pitted or stuffed: Other * * *

The letter included, *inter alia*, plaintiff's name, the broker's name and address, the entry numbers, and dates of entry and liquidation.

On February 11, 1983, the Acting District Director at Terminal Island sent plaintiff's broker a letter which read in part:

Action has been taken on your claim dated 11-16-82 as shown below.

* * * * *

- (X) Denied..... () The claim is not correctable under
- () No proof was submitted to substantiate your claim.
- () Claim was filed untimely.
- (X) Other: The San Francisco ruling is not binding. Presence of any vinegar removes the item from TSUS 148.4440. No reliquidation will be performed.

On April 7, 1983, plaintiff filed a protest under Section 514(a)(7) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1514(a)(7), challenging Customs' refusal to grant relief under section 520(c) of the Tariff Act of 1930, as amended, 19 U.S.C. 1520(c) (1982). Section 514(a)(7) allows protest of a Customs' denial of a "request to reliquidate an entry" under Section 520(c). Section 520(c) permits Customs to correct "a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law * * *" This protest was denied on April 22, 1983.

Plaintiff filed the summons on August 10, 1983 challenging the denial of the relief sought in its letter of November 16, 1982, which

it now claims was a protest under section 514(a)(2), and denial of its April 7, 1983 protest. Section 514(a)(2) provides for protest of a Customs' decision regarding "classification and rate and amount of duties chargeable * * *."

On May 4, 1984, plaintiff moved for summary judgment. Defendant cross-moved for summary judgment on July 10, 1984.

Defendant contends that the November 16, 1982 letter "cannot constitute a section 514 protest by virtue of its contents and the fact that it was specifically labeled a section 520(c) 19 U.S.C. § 1520(c) request by an experienced customs broker."²

Therefore, says the defendant, Customs' letter of February 11, 1983, was not a denial of a protest under section 515 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1515 (1982), and the Court does not have jurisdiction under 28 U.S.C. § 1581(a) (1982).³

The Court holds that the customs broker's letter of November 16, 1982, constituted a valid protest under section 514, and Customs' letter of February 11, 1983, was a denial of the protest under section 515.

Section 514(c)(1), 19 U.S.C. § 1514(c)(1), requires that a protest be in writing "setting forth distinctly and specifically each decision * * * as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor."

In determining whether these requirements have been met, the Supreme Court held:

[T]echnical precision is not required; but the objections must be so distinct and specific, as, when fairly construed, to show that the objection * * * was at the time in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character, to the end that he might ascertain the precise facts, and have an opportunity to correct the mistake and cure the defect * * *

Davies v. Arthur, 96 U.S. 148, 151 (1878), as quoted in *American Mail Line, Ltd. v. United States*, 34 CCPA 1, 6, C. A.D. 335 (1946) *Mattel, Inc. v. United States*, 72 Cust. Ct. 257, 262, C.D. 4547, 377 F. Supp. 955, 960 (1974) ("however cryptic, inartistic, or poorly drawn a communication may be, it is sufficient as a protest * * * if it conveys enough information to apprise knowledgeable officials of the importer's intent and the relief sought").⁴

² Defendant's Reply to Plaintiff's Response to Defendant's Cross-Motion for Summary Judgment, at 2.

³ 28 U.S.C. § 1581(a) provides this Court with "exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930."

Defendant concedes that the Court has jurisdiction to consider the denial of plaintiff's April 7, 1983 protest challenging the refusal of Customs to grant reliquidation under section 520(c). The Court does not reach this claim.

⁴ The standard employed in *Mattel* for determining the sufficiency of a protest has been cited in *Old Republic Insurance Co. v. United States*, 8 CIT—, Slip Op. 84-80 (July 6, 1984); *F.W. Myers & Co. v. United States*, 6 CIT—, Slip Op. 83-182 (Dec. 16, 1983); *American Export Lines, Inc. v. United States*, 85 Cust. Ct. 20, 25, C.D. 4864 (1980). See also *Benito Fernandez Pantaja v. United States*, 85 Cust. Ct. 170, 172, C.R.D. 79-17 ("where the claim is obvious, a failure to state specific provisions of law is not fatal to the sufficiency of a protest").

The November 16, 1982, letter contained all the elements required by section 514(c)(1). It objected to classification of the merchandise under item 148.5600, TSUSA, and sought its reclassification, and reliquidation, under item 148.4440, TSUSA.

Further, Customs treated the November 16, 1982 letter as a protest. It evaluated the claim as challenging the legal consequences of the presence of vinegar in the liquid in which the olives were imported and denied plaintiff's request for reliquidation because the "[p]resence of any vinegar removes the item from TSUS 148.4440."

The labeling of the letter as a request under section 520(c) did not invalidate it as a protest under section 514.

In *Mattel, Inc. v. United States* and *Labay International, Inc. v. United States*, 83 Cust. Ct. 152, C.D. 4834 (1979) the Court held that letters by importers seeking reliquidation under section 520 sufficiently informed Customs of the importer's intent to challenge classifications to constitute timely protests under section 514. In each case the Court "treated as a gratuitous addition" the reference to section 520(c) in the importer's letters. *Labay*, 83 Cust. Ct. at 155 (discussing *Mattel*).

The defendant attempts to distinguish *Mattel* and *Labay* on the ground that the letters in those cases were written by nonprofessional employees of the plaintiffs while the letter in this action was prepared by an experienced, licensed customs broker using a form.⁵

This distinction does not change the result. The sufficiency of a protest is not dependent upon the expertise of the drafter.

Since the importer's letter clearly stated the claim of the importer and was filed within the time required by section 514 it constituted a protest under section 514. Customs' letter of February 11, 1983, was a denial of the protest under section 515 and the Court has jurisdiction of plaintiff's challenge to the denial under 28 U.S.C. § 1581(a). Defendant's motion for summary judgment is denied.

Plaintiff's motion for summary judgment is also denied.

The Court may not grant a motion for summary judgment where there is a genuine issue of material fact to be tried. *United States v. Mobay Corporation*, 65 CCPA 53, 59, C.A.D. 1206, 576 F.2d 368, 373 (1978). "When deciding summary judgment motions the court should resolve all ambiguities and draw all reasonable inferences in favor of the party against whom summary judgment is sought." *Yamaha International Corp. v. United States*, 3 CIT 108, 109 (1982) (citing *United States v. Diebold, Inc.* 369 U.S. 654, 655 (1962)); see *S.S. Kresge Co. v. United States*, 77 Cust. Ct. 154, C.R.D. 76-6 (1976).

Defendant says that the vinegar permanently affected the flavor of the olives, and they therefore cannot be classified as "provision-

⁵ The defendant cites *Continental Ore Corp. v. United States*, 67 Cust. Ct. 202, C.D. 4274 (1971) and *Sanford Steel Pipe Products Co. v. United States*, 68 Cust. Ct. 113, C.D. 4946, 339 F. Supp. 1273 (1972). Neither case holds that customs brokers must meet a higher standard of technical precision in drafting protests than other persons.

ally preserved" within headnote 1 (c) to Subpart B, Part 9, Schedule 1, TSUSA, defining "in brine." Plaintiff maintains that the vinegar did not permanently affect the taste of the olives.

Plaintiff says the olives were not edible in their imported condition, and therefore cannot be classified as "otherwise prepared or preserved" under item 148.5600, TSUSA. Defendant denies that the olives were not edible.

These are genuine issues of material fact for trial.

Decisions of the United States Court of International Trade

Abstracts

DEPARTMENT OF COMMERCE

The following abstracts of decisions of the United States Court of International Trade are published for the information and guidance of officers of the customs and border protection. Decisions are not of sufficient general interest to print in full, the abstracts are published to customs officials in easily locating cases and tracing important facts.

United States International Trade

DEPARTMENT OF THE TREASURY, *February 14, 1985.*

Court of International Trade at New York are
the customs and others concerned. Although the
the summary herein given will be of assistance
the facts.

WILLIAM VON RAAB,
Commissioner of Customs.

ABSTRACTED PRO

DECISION NUMBER	JUDGE AND DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and r
P85/25	Watson, J. January 30, 1985	Europe Craft Imports, Inc.	84-1-00111	Not stated
P85/26	Re, C.J. February 12, 1985	Pacific Trail Sportswear	83-1-00050	Item 880.04 42.5% Item 880.84 25¢ per lb. plus 27.5%
P85/27	Carman, J. February 12, 1985	Donner Mountain Corp.	83-8-01159	Not stated
P85/28	Re, C.J. February 13, 1985	Formosa Plastic Group	78-12-02152, etc.	Item 355.81 6%
P85/29	Re, C.J. February 13, 1985	Formosa Plastic Group	79-7-01117	Item 355.81 6%

PROTEST DECISIONS

PROTESTED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
Item No. and rate	Item No. and rate		
Item 379.46 Various rates	Item 379.46 Various rates	Judgment on the pleadings	New York Style 97751
Item 376.56 16.5%	Item 376.56 16.5%	Pacific Trail Sportswear v. U.S., S.O. 82-45	Seattle Jackets
Item 700.35 Various rates	Item 700.35 Various rates	Judgment on the pleadings	San Francisco Footwear
Item A771.42 Free on duty pursuant to General Headnote 3(c)	Item A771.42 Free on duty pursuant to General Headnote 3(c)	U.S. v. Elbe Products Corp., C.A.D. 1267	Los Angeles Vinyl sponge leather, etc.
Item A771.42 Free of duty pursuant to General Headnote 3(c)	Item A771.42 Free of duty pursuant to General Headnote 3(c)	U.S. v. Elbe Products Corp., C.A.D. 1267	Los Angeles Vinyl sponge leather, etc.

Decisions of the Court of International Trade

Abstracts

ABSTRACTED REAPPRAISALS

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R85/89	Watson, J. February 11, 1985	Michelin Tire Corp.	76-6-01533	Countervailing duties
R85/90	Watson, J. February 11, 1985	Michelin Tire Corp.	76-10-02210	Countervailing duties
R85/91	Watson, J. February 12, 1985	Akron	R63/2466, etc.	Export value
R85/92	Watson, J. February 12, 1985	Asiatic Import Co.	R63/4882, etc.	Export value
R85/93	Watson, J. February 12, 1985	Craig Panorama, Inc.	R61/19671, etc.	Export value

the United States International Trade

tracts

APRAISEMENT DECISIONS

N	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
	5.37 and 2.513	Agreed statement of facts	Portland, Maine; Chicago; New York; Norfolk Michelin X-radial steel belted tires
	5.37	Agreed statement of facts	Norfolk Michelin X-radial steel belted tires
	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety

U.S. COURT OF INTERNATIONAL TRADE

ABSTRACTED REAPPRAISEMEN

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	
R85/94	Watson, J. February 12, 1985	Distributors Import Co.	R64/1785, etc.	Export value	R
R85/95	Watson, J. February 12, 1985	Fedco, Inc.	R63/8834	Export value	R
R85/96	Watson, J. February 12, 1985	Import	R67/17474, etc.	Export value	R
R85/97	Watson, J. February 12, 1985	Japan Mdee Co.	R58/1367, etc.	Export value	F
R85/98	Watson, J. February 12, 1985	Kayten Trading Co.	R63/5337	Export value	A
R85/99	Watson, J. February 12, 1985	Kreiss Corp.	R63/4880, etc.	Export value	A
R85/100	Watson, J. February 12, 1985	Laco Supply Co.	R51/18045	Export value	F

HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
F.o.b unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	New Orleans Transistor radios, together with their accessories and parts; entirety
F.o.b unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
F.o.b unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Portland, Oreg. Batteries
F.o.b unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Binoculars
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
F.o.b unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety

R85/101	Watson, J. February 12, 1985	Martel Electronics Sales, Inc.	R63/7097	Export value
R85/102	Watson, J. February 12, 1985	Monarch International, Inc.	R65/20801	Export value
R85/103	Watson, J. February 12, 1985	National Silver Co.	R61/19914, etc.	Export value
R85/104	Watson, J. February 12, 1985	National Silver Co.	R66/28065, etc.	Export value
R85/105	Watson, J. February 12, 1985	New York Merchandise Co.	R64/20687, etc.	Export value
R85/106	Watson, J. February 12, 1985	New York Merchandise Co.	R63/7784	Export value
R85/107	Watson, J. February 12, 1985	New York Merchandise Co.	R63/4278, etc.	Export value
R85/108	Watson, J. February 12, 1985	New York Merchandise Co.	R63/4779, etc.	Export value
R85/109	Watson, J. February 12, 1985	Randa, Inc.	R63/9709	Export value

value	F.o.b unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Ceramic products
value	F.o.b unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Honolulu Transistor radios, together with their accessories and parts; entirety
value	F.o.b unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	San Diego Flatware
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety

ABSTRACTED REAPPRAISE

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R85/110	Watson, J. February 12, 1985	Randa, Inc.	R68/6797, etc.	Export value
R85/111	Watson, J. February 12, 1985	Sun Coast Merchandise Co.	R59/1823, etc.	Export value
R85/112	Watson, J. February 12, 1985	Sun Coast Merchandise Co.	R60/20843, etc.	Export value
R85/113	Watson, J. February 12, 1985	Toyo Rug Co.	R64/15274	Export value
R85/114	Watson, J. February 12, 1985	United Silver & Cutlery Co.	R69/22- 51781	Export value
R85/115	Watson, J. February 13, 1985	Beer & Beards	254595-A, etc.	Export value
R85/116	Watson, J. February 13, 1985	Craig Panorama, Inc.	R63/8827, etc.	Export value
R85/117	Watson, J. February 13, 1985	Distributors Import Co.	R68/10916	Export value

RAISEMENT DECISIONS—Continued

IS OF ATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
ue	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
ue	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Binoculars
ue	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Flatware
ue	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Baltimore Rugs
ue	F.o.b unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Flatware
ue	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Silk scarfs
ue	F.o.b unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
ue	F.o.b unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	New Orleans Batteries

R85/118	Watson, J. February 13, 1985	Kalimar, Inc.	R60/10287	Export va
R85/119	Watson, J. February 13, 1985	Kaysons International Ltd.	R69/4175, etc.	Export va
R85/120	Watson, J. February 13, 1985	Majestic Electronics Inc.	R63/6570, etc.	Export va
R85/121	Watson, J. February 13, 1985	Majestic Electronics Inc.	R65/7635	Export va
R85/122	Watson, J. February 13, 1985	National Silver Co.	R63/4061, etc.	Export va
R85/123	Watson, J. February 13, 1985	National Silver Co.	R64/14810, etc.	Export va
R85/124	Watson, J. February 13, 1985	Randa, Inc.	R63/2886, etc.	Export va
R85/125	Watson, J. February 13, 1985	Sun Coast Merchandise Corp.	282227-A, etc.	Export va
R85/126	Watson, J. February 13, 1985	Sun Coast Merchandise Corp.	R60/22710, etc.	Export va

port value	Appraised values as shown on entry documents less 7.5% thereof, net packed	Agreed statement of facts	Honolulu Binoculars
port value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Charleston Place setting, etc.
port value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
port value	F.o.b unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
port value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Earthenware
port value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Porcelainware
port value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety
port value	F.o.b unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Binoculars
port value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Transistor radios, together with their accessories and parts; entirety

ABSTRACTED REAPPRAISEMENT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	
R85/127	Watson, J. February 13, 1985	United Silver & Cutlery Co.	R85/16689	Export value	F

MENT DECISIONS—Continued

HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Flatware

Decision of U.S. Court of Appeals for the Federal Circuit

**APPEAL No. 84-1326 Toyota Motor Sales, U.S.A. Inc. v. The
United States of America—AUTOMOTIVE CAB CHASSIS IMPORTED
FROM JAPAN—Appeal from Slip Op. 84-38, filed June 11, 1984,
decided February 1, 1985, Affirmed.**

Decision of U. S. Court of Appeals for the Federal Circuit

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